IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 13250 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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CHAMANSING RAGHUVIRSING JUNI (CHIKLIGAR)

Versus

COMMISSIONER OF POLICE

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Appearance:

1. Special Civil Application No. 13250 of 2003

MR HARSHAD K PATEL for Petitioner No. 1

MR RM CHAUHAN Ld. AGP for Respondent No. 1-3

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CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 08/10/2003

ORAL JUDGEMENT

By way of this special civil application, the petitioner has challenged the order of detention passed against him by the Police Commissioner, Vadodara city on

13.3.2003 under the exercise of powers under sec. 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as "the PASA Act" for short).

The grounds served upon the petitioner and placed on record reveal that the detaining authority relied upon two offences registered against the petitioner on 29.1.2003 and 30.1.2003 under sec. 332,395,397,412 of IPC and under sec. 135 of BP Act wherein it is alleged that the silver ornaments worth of Rs. 38,000/and in the second case, worth of Rs. 15,135/- were recovered from the petitioner . The detaining authority also relied upon two in-camera statements recorded by the detaining authority on 26.2.2003 and 28.2.2003 and verified by the detaining authority on 12.3.2003 revealing the incidents of 29.1.2003 and 30.1.2003 and the order came to be passed against the petitioner on 13.3.2003. Though the record reveals that when the order came to be passed against the petitioner, he was under judicial custody in pursuance of the criminal offence registered against him right from 30.1.2003. From the above material, the order impugned came to be passed against the petitioner.

Heard ld. advocate Mr. Patel for the petitioner and ld. AGP Mr. RM Chauhan for the respondents were heard at length.

Out of various contentions raised on behalf of the petitioner and controverted by ld. AGP, it appears that the matter can be disposed of on the ground that whether the detaining authority took into consideration the vital aspect of the matter. Undoubtedly, the record reveal that the petitioner was under judicial custody in pursuance of the criminal offence registered against him right from 30.1.2003. The detaining authority came to the conclusion that the petitioner was likely to move bail application at any time before the court and was likely to be released on bail and was likely to continue his illegal activities. ON going through the record, it is found that there was no material available with the detaining authority to reach to this subjective satisfaction. Ld. advocate for the petitioner makes a statement that even after service of detention order, no bail application whatsoever has been moved by the petitioner and the petitioner till date is in judicial custody in pursuance of the criminal offence registered against him. Therefore, facts of this case are squarely covered by a decision of Apex Court in the matter of Amrutlal and others vs. Union Government through

Secretary, Ministry of Finance and others, as reported in AIR 2000 SC 3675. The order impugned is required to be quashed on this ground alone.

In the result, this special civil application is allowed. The order impugned in this special civil application passed on 13.3.20032 by the Police Commissioner, Vadodara City, under the PASA Act against the petitioner is quashed and set aside. The petitioner is directed to be set at liberty forthwith, if he is not required to be detained in jail for any other purpose. Rule made absolute with no order as to costs.

(J.R. VORA, J.)

mandora/